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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,147	07/28/2003	Perry H. Monitto	1060-120	6568
28249	7590	05/12/2006	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			HAN, JASON	
			ART UNIT	PAPER NUMBER
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DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/629,147	Applicant(s) MONITTO, PERRY H.	
	Examiner Jason M. Han	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to Claims 1-3, 5-9, and 13-20 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant has amended the Independent Claims to commonly recite a ratio of the length of the base to the width of the pedestal to be a predetermined ratio (e.g, 5:1 to 6:1 or 4:1 to 6:1) so as to provide stability. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a predetermined length to width ratio of 4:1 (or 5:1) to 6:1, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.
3. It remains obvious to the Examiner that the predetermined ratio is not the primary patentable feature of the claimed invention, as corroborated by the different ranges claimed (note Claim 1 versus Claim 13) by the Applicant. At present, the predetermined range of ratios is optimal for maximizing the height while ensuring stability, and thus, improving illumination and/or aesthetics.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. Applicant has claimed a broader range of the predetermined ratio already narrowly defined within Independent Claim 13.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426).

Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the base is attached at the lower part to the pedestal, and the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1;
- A housing [Figure 1: (32)] attached to the upper part of the base and attachable to a light source [Figure 3: (12)] for providing light therefrom; and
- A container [Figures 1, 3: (34)] having at least an underside [Figures 1, 3: proximate (30)] that is attached to the housing, and wherein the light from the light source in the housing can be directed to the underside of the container.

Though Whittington does not specifically teach the ratio of the length of the base to the width of the pedestal to be within a predetermined ratio of 5:1 to 6:1, it would

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have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said predetermined ratio of 5:1 to 6:1 so as to optimize the height while ensuring stability for the floor lamp from tipping over. In this case, it is commonly known that providing the optimized height would improve illumination over a larger area and may improve aesthetics. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

6. Claims 2-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 1 above, and further in view of Smith (U.S. Patent 3387896).

7. With regards to Claim 2, Whittington discloses the claimed invention as cited above, but does not specifically teach the container including at least two materials, and the movement of at least one of the at least two materials inside the container being displayed when the light from the light source in the housing is applied to the container.

Smith teaches a display device including a housing [Figure 1: (11)] having a light source [Figure 2: (13)] disposed on the underside of a container [Figures 1-2: (1)] for lighting at least two materials therein, whereby the movement of at least one of the at least two materials inside the container is displayed when the light from the light source in the housing is applied to the container.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the display device of Smith so as to enhance the aesthetic appeal of said lamp. In addition, it would have

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been obvious to one ordinarily skilled in the art at the time of invention to mount the display device of Smith to the pedestal of Whittington to provide greater illumination to surrounding areas via a higher disposition. Such a configuration is commonly known within the art and would also add to the conspicuousness of the display.

8. With regards to Claim 3, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the ratio of the cumulative length of the base, the housing, and the container to the width of the pedestal being less than 7:1.

9. With regards to Claim 5, Whittington in view of Smith discloses the claimed invention as cited above. In addition, both Whittington [Figure 3: (12)] and Smith [Figure 2: (13)] teach the light source including a light bulb.

10. With regards to Claim 6, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the housing being integrally attached to the base. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the housing integral with the base, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). In this case, making integral the housing and base could add to aesthetic appeal and reduce costs via manufacturing of fewer components.

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11. With regards to Claim 7, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the pedestal being substantially circular in shape [Figure 1: (20)].

12. With regards to Claim 8, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the base being substantially frusto-conical in shape. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the base into a frusto-conical shape, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. v. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, a frusto-conical shaped base may add to aesthetic appeal.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 1 above, and further in view of Ching (U.S. Publication 2002/0126492).

Whittington discloses the claimed invention as cited above, but does not specifically teach the pedestal configured to have a plurality of portions selectively displaceable relative to the base so as to modify the width of the pedestal and to increase stability of the floor lamp.

Ching teaches a work light stand including a pedestal [Figure 2: (25)] having a plurality of portions [Figure 2: (24); Page 2, Paragraph 16] selectively displaceable relative to the base so as to modify the width of the pedestal and to increase stability of the floor lamp.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the expandable pedestal of Ching in order to provide a more compact unit when traveling and an expandable and stable unit during use.

14. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) in view of Smith (U.S. Patent 3387896).

15. With regards to Claim 13, Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the base is attached at the lower part to the pedestal, and the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1;
- A housing [Figure 1: (32)] attached to the upper part of the base and attachable to a light source [Figure 3: (12)] for providing light therefrom; and
- A container [Figures 1, 3: (34)] having at least an underside [Figures 1, 3: proximate (30)] that is attached to the housing, and wherein the light from the light source in the housing can be directed to the underside of the container.

Though Whittington does not specifically teach the ratio of the length of the base to the width of the pedestal to be within a predetermined ratio of 4:1 to 6:1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said predetermined ratio of 4:1 to 6:1 so as to optimize the height while ensuring stability for the floor lamp from tipping over. In this case, it is commonly



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known that providing the optimized height would improve illumination over a larger area and may improve aesthetics. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Whittington also does not specifically teach a liquid motion lamp container having a light source contained therein and attached at the upper parts of the base.

Smith teaches a liquid motion lamp [Figures 1-2] including a container [Figure 1: (11)] having a light source [Figure 2: (13)] disposed therein.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the liquid motion lamp of Smith so as to enhance the aesthetic appeal of said lamp. In addition, it would have been obvious to one ordinarily skilled in the art at the time of invention to mount the liquid motion lamp of Smith to the pedestal of Whittington to provide greater illumination to surrounding areas via a higher disposition. Such a configuration is commonly known within the art and would also add to the conspicuousness of the liquid motion lamp/display.

16. With regards to Claim 14, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the ratio of the cumulative length of the base, the housing, and the container to the width of the pedestal being less or equal to 7:1.

17. With regards to Claim 15, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the pedestal being

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substantially circular in shape and the width of the pedestal including the diameter of the pedestal [Figure 1: (20)].

18. With regards to Claim 16, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the base [Figure 1: (40)] being substantially cylindrical in shape.

19. With regards to Claim 17, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the liquid motion lamp container being substantially cylindrical in shape. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the container into a cylindrical shape, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. v. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, a cylindrical shaped container may add to aesthetic appeal.

20. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426).

21. With regards to Claim 18, Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1, and the upper part of the base is attachable to a light source [Figure 3: (12)] for providing light therefrom; and

- A container [Figures 1, 3: (32, 34)] having at least an underside [Figures 1, 3: proximate (30, 32)] that is attached to the upper part of the base, and wherein the light from the light source illuminates through the underside of the container.

Though Whittington does not specifically teach the ratio of the length of the base to the width of the pedestal to be within a predetermined ratio of 5:1 to 6:1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said predetermined ratio of 5:1 to 6:1 so as to optimize the height while ensuring stability for the floor lamp from tipping over. In this case, it is commonly known that providing the optimized height would improve illumination over a larger area and may improve aesthetics. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

22. With regards to Claim 19, Whittington teaches the container being transparent or translucent [Figure 1: (32); Column 3, Lines 46-49].

23. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 18 above, and further in view of Ching (U.S. Publication 2002/0126492).

Whittington discloses the claimed invention as cited above, but does not specifically teach the pedestal configured to have a plurality of portions displaceable relative to one another and to the base, so as to modify the width of the pedestal.

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Ching teaches a work light stand including a pedestal [Figure 2: (25)] having a plurality of portions [Figure 2: (24); Page 2, Paragraph 16] selectively displaceable relative to one another and to the base, so as to modify the width of the pedestal and to increase stability of the floor lamp.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the expandable pedestal of Ching in order to provide a more compact unit when traveling and an expandable and stable unit during use.

***Allowable Subject Matter***

24. Claims 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

25. The following is a statement of reasons for the indication of allowable subject matter: With regards to Dependent Claim 10, the Applicant has sufficiently recited and claimed a displaceable pedestal having base elements and multiple segments with T-shaped cross section configured to have a foot and two shoulders, whereby the base elements are each juxtaposed with an underside of the shoulders and slidably coupled therewith so that the base elements and the segments are slidable relative to one another. The prior art fails to teach or suggest the combination of structural elements disclosed and claimed herein, and all subsequent dependent claims are allowed.

26. Claim 12 is allowed.

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27. The following is an examiner's statement of reasons for allowance: With regards to Claim 12, the Applicant has sufficiently amended and narrowly defined a floor lamp, including a pedestal configured with a plurality of portions that are selectively displaceable relative to the base, wherein the portions are cumulatively configured so as to provide a substantially continuous outer periphery of the pedestal having a relatively small diameter to an extended position having a relatively large diameter. The prior art fails to teach or suggest the combination of structural elements disclosed and claimed herein.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

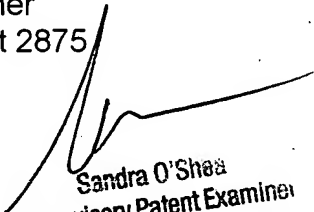
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (5/10/2006)

Jason M Han  
Examiner  
Art Unit 2875



Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800